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8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case Number *2013-670*  
**A C C U S A T I O N**

13 **MICHAEL ANTHONY BRIONES**  
1109 Puerto Rico Street  
El Paso, Texas 79915

14 **Registered Nurse License Number 723904**

15 Respondent.

16  
17 Complainant Louise R. Bailey, M.Ed., R.N., alleges:

18 **PARTIES**

19 1. Complainant brings this Accusation solely in her official capacity as the Executive  
20 Officer of the Board of Registered Nursing (Board), Department of Consumer Affairs.

21 2. On or about April 1, 2008, the Board issued Registered Nurse License Number  
22 723904 to respondent Michael Anthony Briones. This registered nurse license was in full force  
23 and effect at all times relevant to the charges brought in this Accusation and will expire on July  
24 31, 2013, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the following  
27 laws. All section references are to the Business and Professions Code unless otherwise indicated.

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1           4.     Section 118, subdivision (b), provides:

2           “The suspension, expiration, or forfeiture by operation of law of a license issued by a board  
3 in the department, or its suspension, forfeiture, or cancellation by order of the board or by order  
4 of a court of law, or its surrender without the written consent of the board, shall not, during any  
5 period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its  
6 authority to institute or continue a disciplinary proceeding against the licensee upon any ground  
7 provided by law or to enter an order suspending or revoking the license or otherwise taking  
8 disciplinary action against the licensee on any such ground.”

9           5.     Section 2750 provides:

10          “Every certificate holder or licensee, including licensees holding temporary licenses, or  
11 licensees holding licenses placed in an inactive status, may be disciplined as provided in this  
12 article [Article 3 of the Nursing Practice Act (Bus. & Prof Code, § 2700 et seq.)]. As used in this  
13 article, “license” includes certificate, registration, or any other authorization to engage in practice  
14 regulated by this chapter. The proceedings under this article shall be conducted in accordance  
15 with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the  
16 Government Code, and the board shall have all the powers granted therein.”

17          6.     Section 2759 provides:

18          “The board shall discipline the holder of any license, whose default has been entered or  
19 who has been heard by the board and found guilty, by any of the following methods:

20               “(a) Suspending judgment.

21               “(b) Placing him upon probation.

22               “(c) Suspending his right to practice nursing for a period not exceeding one year.

23               “(d) Revoking his license.

24               “(e) Taking such other action in relation to disciplining him as the board in its discretion  
25 may deem proper.”

26          7.     Section 2764 provides:

27          “The lapsing or suspension of a license by operation of law or by order or decision of the  
28 board or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the

1 board of jurisdiction to proceed with any investigation of or action or disciplinary proceeding  
2 against such license, or to render a decision suspending or revoking such license.”

3 **STATUTORY AUTHORITY**

4 8. Section 490, subdivision (a), provides:

5 “In addition to any other action that a board is permitted to take against a licensee, a board  
6 may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if  
7 the crime is substantially related to the qualifications, functions, or duties of the business or  
8 profession for which the license was issued.”

9 9. Section 2761 provides, in pertinent part:

10 “The board may take disciplinary action against a certified or licensed nurse or deny an  
11 application for a certificate or license for any of the following:

12 “(a) Unprofessional conduct . . . .

13 . . . .

14 “(f) Conviction of a felony or of any offense substantially related to the qualifications,  
15 functions, and duties of a registered nurse, in which event the record of the conviction shall be  
16 conclusive evidence thereof.”

17 10. Section 2762 provides, in pertinent part:

18 “In addition to other acts constituting unprofessional conduct within the meaning of this  
19 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this  
20 chapter to do any of the following:

21 . . . .

22 “(b) Use any controlled substance as defined in Division 10 (commencing with Section  
23 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in  
24 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to  
25 himself or herself, any other person, or the public or to the extent that such use impairs his or her  
26 ability to conduct with safety to the public the practice authorized by his or her license.

27 “(c) Be convicted of a criminal offense involving the prescription, consumption, or  
28 self-administration of any of the substances described in subdivisions (a) and (b) of this section,

1 or the possession of, or falsification of a record pertaining to, the substances described in  
2 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence  
3 thereof.”

4 11. California Code of Regulations, title 16, section 1444 provides, in pertinent part:

5 “A conviction or act shall be considered to be substantially related to the qualifications,  
6 functions or duties of a registered nurse if to a substantial degree it evidences the present or  
7 potential unfitness of a registered nurse to practice in a manner consistent with the public health,  
8 safety, or welfare.”

9 **COST RECOVERY**

10 12. Section 125.3 provides, in pertinent part:

11 “(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary  
12 proceeding before any board within the department or before the Osteopathic Medical Board,  
13 upon request of the entity bringing the proceedings, the administrative law judge may direct a  
14 licensee found to have committed a violation or violations of the licensing act to pay a sum not  
15 to exceed the reasonable costs of the investigation and enforcement of the case.

16 ...

17 “(i) Nothing in this section shall preclude a board from including the recovery of the costs  
18 of investigation and enforcement of a case in any stipulated settlement.”

19 **FACTUAL BACKGROUNDS AND CAUSES FOR DISCIPLINE**

20 **DUI**

21 13. On or about October 13, 2008, at about 1:23 a.m., in Yuba City, California, a Sutter  
22 County deputy sheriff observed a vehicle driven by respondent veer twice outside its lane. The  
23 deputy pulled the vehicle over. He smelled the odor of an alcoholic beverage coming from  
24 respondent. Respondent displayed horizontal nystagmus, or involuntary eye movement, during  
25 the field sobriety test. The deputy arrested respondent on suspicion of violating Vehicle Code  
26 section 23152, subdivisions (a) (driving under the influence of an alcoholic beverage) and (b)  
27 (driving while having a 0.08 percent or higher blood alcohol content). Respondent refused to take

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1 a breath test, and instead submitted to a blood draw. The toxicology test showed that respondent  
2 had a blood alcohol content of 0.20 percent.

3 14. The district attorney charged respondent with violating Vehicle Code section 23152,  
4 subdivisions (a) and (b), with a special allegation under Vehicle Code section 23578 that  
5 respondent had a blood alcohol content of 0.15 percent or higher.

6 15. On or about March 11, 2009, in *The People of the State of California vs. Michael*  
7 *Anthony Briones*, case number CR-TR-08-0003069, Superior Court of California, County of  
8 Sutter, respondent pled no contest to a misdemeanor violation of Vehicle Code section 23152,  
9 subdivision (b), and admitted the special allegation pursuant to Vehicle Code section 23578. The  
10 other count was dismissed. Sentencing was suspended, and respondent was placed on summary  
11 probation for a period of three years, which included, but was not limited to, 96 hours'  
12 incarceration to be served in Texas.

13 **FIRST CAUSE FOR DISCIPLINE**  
14 **Bus. & Prof. Code, §§ 490, subd. (a), 2761, subd. (f)**  
15 **Criminal Conviction**

16 16. The allegations of paragraphs 13-15 are realleged and incorporated by reference as if  
17 fully set forth.

18 17. Respondent has subjected his registered nurse license to disciplinary action under  
19 sections 490, subdivision (a), and 2761, subdivision (f), for a criminal conviction. As set forth in  
20 paragraphs 13-15 above, respondent was convicted of a misdemeanor violation of Vehicle Code  
21 section 23152, subdivision (b).

22 **SECOND CAUSE FOR DISCIPLINE**  
23 **Bus. & Prof. Code, §§ 2761, subd. (a), 2762, subd. (b)**  
24 **Unprofessional Conduct – Use of Alcoholic Beverage in a Manner Dangerous or Injurious**  
25 **to Self or Public**

26 18. The allegations of paragraphs 13-15 are realleged and incorporated by reference as if  
27 fully set forth

28 19. Respondent has subjected his registered nurse license to disciplinary action under  
section 2761, subdivision (a), for unprofessional conduct, as defined by section 2762, subdivision  
(b). As set forth in paragraphs 13-15 above, respondent used alcoholic beverages in a manner

1 dangerous or injurious to himself or the public by driving while having a 0.08 percent or higher  
2 blood alcohol content.

3 **THIRD CAUSE FOR DISCIPLINE**  
4 **Bus. & Prof. Code, §§ 2761, subd. (a), 2762, subd. (c)**  
5 **Unprofessional Conduct – Criminal Conviction**

6 20. The allegations of paragraphs 13-15 are realleged and incorporated by reference as if  
7 fully set forth

8 21. Respondent has subjected his registered nurse license to disciplinary action under  
9 section 2761, subdivision (a), for unprofessional conduct, as defined by section 2762, subdivision  
10 (c). As set forth in paragraphs 13-15 above, respondent was convicted of a misdemeanor  
11 violation of Vehicle Code section 23152, subdivision (b), for driving while having a 0.08 percent  
12 or higher blood alcohol content.

13 **DRIVING WHILE UNLICENSED**

14 22. On or about January 23, 2012, at about 11:00 a.m., in Cotati, California, a Cotati  
15 police officer observed a vehicle driven by respondent with excessive window tinting. The  
16 officer pulled the vehicle over. The officer found that respondent's license was suspended for  
17 respondent's DUI arrest and conviction in 2008-2009. The officer cited respondent on suspicion  
18 of violating Vehicle Code sections 14601.1, subdivision (a) (driving with a suspended license),  
19 and 26708, subdivision (a)(1) (driving with material applied on window).

20 23. The district attorney charged respondent with violating Vehicle Code sections  
21 14601.2, subdivision (a) (driving when privilege suspended or revoked for driving under the  
22 influence of alcoholic beverage), 14601.5, subdivision (a) (driving with knowledge of suspension,  
23 revocation, or restriction of driving privilege), and 26708, subdivision (a)(1).

24 24. On or about March 1, 2012, in *The People of the State of California vs. Michael*  
25 *Anthony Briones*, case number SCR-615185, Superior Court of California, County of Sonoma,  
26 respondent pled no contest to an added misdemeanor count of Vehicle Code section 12500,  
27 subdivision (a) (driving while unlicensed). All other counts were dismissed. Probation was  
28 denied and respondent was sentenced to pay fines totaling \$250.00.

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**FOURTH CAUSE FOR DISCIPLINE**  
**Bus. & Prof. Code, §§ 490, subd. (a), 2761, subd. (f)**  
**Criminal Conviction**

25. The allegations of paragraphs 22-24 are realleged and incorporated by reference as if fully set forth.

26. Respondent has subjected his registered nurse license to disciplinary action under sections 490, subdivision (a), and 2761, subdivision (f), for a criminal conviction. As set forth in paragraphs 22-24 above, respondent was convicted of a misdemeanor violation of Vehicle Code section 12500, subdivision (a).

**PRAYER**

WHEREFORE, complainant requests that a hearing be held on the matters alleged in this Accusation, and that following the hearing the Board issues a decision:

1. Revoking or suspending Registered Nurse License Number 723904 issued to Michael Anthony Briones;
2. Ordering Michael Anthony Briones to pay the Board the reasonable costs of the investigation and enforcement of this case pursuant to Business and Professions Code section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: February 22, 2013

*for* LOUISE R. BAILEY, M.Ed., R.N.  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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